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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/572,997

04/03/2007

Klaus Forstner

VO-753

9038

42419 7590 12/20/2011
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EXAMINER

BLOCH, MICHAEL RYAN

ART UNIT

PAPER NUMBER

3735

MAIL DATE

DELIVERY MODE

12/20/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/572,997	Applicant(s) FORSTNER, KLAUS	
	Examiner MICHAEL R. BLOCH	Art Unit 3735	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 December 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 2-4, 6-12, 14-22, 25, 28-30 and 32.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Miranda Le/
 Supervisory Patent Examiner, Art Unit 3735

/M. R. B./
 Examiner, Art Unit 3735

From 7: Applicant's amendments of claim 14, was a minor change that set the claim as being definite. For appeal purposes, the rejections to all claims remain the same, and the only changes are to claims 14-16 of the action mailed 9/13/2011; such that the applied prior art rejections of claims 14-16 are still valid and the subject matter is now unpatentable over Ramsey, III et al. (Ramsey, US 5,170,795) in view of Diab (US 6,463,311) and Goto et al. (US 2003/0092999) as applied to claim 12 and further in view of Doten et al. (US 2002/0058875).

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's comments that the art cited in the IDS was from the international search report is acknowledged, applicant is thanked for pointing this out. Applicant states that the international search report concluded that the reference "Ramsey, III et al" was a reference defining the general state of the art. The examiner thanks the applicant for pointing out the international search report, however, the examiner respectfully disagrees with these findings as indicated in the rejections of the claims in the action mailed 9/13/2011. Applicant argues that the rejection is incomplete and insufficient as applicant alleges the examiner did not provide any citation or explanation on how Ramsey, III et al. teaches or suggests the limitations: the evaluating device determining and indicating whether the blood pressure value was obtained during the hemodynamic stability, or whether a corrected blood value is to be determined. Applicant contends that "each limitation of claim 35 is repeated, separated by a semicolon. The above limitation at page 3 does not include any criteria or explanation as to how Ramsey, III et al. allegedly provides this claim limitation." The examiner respectfully disagrees with the applicant's argument that the rejection is incomplete and insufficient. Firstly, the examiner points the applicant to chapter 2141.02 (VI) of the MPEP where prior art must be considered in its entirety. Secondly, the format of the examiner's rejection contains internal citations identifying the pertinent sections of the entire disclosure related to particular claim elements, where the usage of semicolons was merely to match applicants formatting of the original claims. The alleged subject matter applicant suggests incomplete, "the evaluating device determining and indicating whether the blood pressure value was obtained during the hemodynamic stability, or whether a corrected blood value is to be determined" is clearly cited by the examiner on page 3 of the rejection where the examiner cites Figures 1, 3-9 as being pertinent information in regards to previous claim limitations, including the disputed limitations. To help clarify the cited portions of the prior art with regards to "the evaluating device determining and indicating whether the blood pressure value was obtained during the hemodynamic stability, or whether a corrected blood value is to be determined" is clearly anticipated by the device in US 5,170,795 to Ramsey, III et al. as seen in Figure 1: the device evaluates an oscillometric wave including measuring the oscillometric amplitude and determining a corrected value, which clearly anticipates the claimed limitations, additionally, it is clear from the Ramsey document that the evaluating device utilized is a microprocessor which gathers readings from a pressure transducer attached to a sphygmomanometer (see Figure 10). Applicants other arguments stem from this point addressed and are moot as the rejection is confirmed. The Final rejection is confirmed as being sufficient and complete and thus will not be withdrawn. The applicant's request for a further telephone interview is acknowledged and upon scheduling and submission of an agenda will be granted.